

Message Text

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ACTION EB-11

INFO OCT-01 ARA-16 ISO-00 CAB-09 CIAE-00 COME-00 DODE-00

DOT-00 INR-10 NSAE-00 RSC-01 FAA-00 NSCE-00 SSO-00

USIE-00 INRE-00 SS-20 L-03 H-03 PA-04 PRS-01 OMB-01

TRSE-00 DRC-01 /081 W

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O 012310Z JUL 74

FM AMEMBASSY LIMA

TO SECSTATE WASHDC IMMEDIATE 795

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EO 11652: N/A

TAGS: ETRN, PE

SUBJECT: CIVAIR - BRANIFF/AEROPERU PROBLEM - PAN AMERICAN
BECOMES INVOLVED.

REF: LIMA 5268

1. SOUTH OF BRANIFF ACCOMPANIED BY THEODORE PELIKAN OF PANAM CALLED ON AMBASSADOR THIS MORNING (JULY 1). PELIKAN EXPLAINED THAT PANAM IS CLOSING ITS OFFICE HERE AND THAT HE IS LEAVING COUNTRY. HE HAS BEEN ASKED BY DGTA TO PAY TWENTY PERCENT SURCHARGE ON "FIFTH FREEDOM" TRAFFIC CARRIED BY PANAM AS RESULT OF TICKETS SOLD HERE. (NOTE: PANAM DOES NOT ACTUALLY OPERATE THROUGH LIMA BUT HAS MAINTAINED TICKET SALES OPERATION WHICH NOW IN HANDS AGENT.) PELIKAN HAS BEEN UNDER CONSIDERABLE PRESSURE TO SIGN CONTRACT "AS REQUIRED BY THE LAWS OF THE REVOLUTIONARY GOVERNMENT OF THE ARMED FORCES OF PERU".

2. PELIKAN IS PREPARED AGREE TO DGTA REQUEST AND ON INSTRUCTIONS FROM PANAM HEADQUARTERS, WAS TO HAVE SIGNED CONTRACT TO THIS EFFECT TODAY. SOUTH THINKS (PERHAPS CORRECTLY ALTHOUGH PANAM, UNLIKE BRANIFF IS NOT OPERATING UNDER BILAT
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ERAL)

THAT SIGNATURE BY PANAM OF SUCH A CONTRACT
MIGHT CREATE BAD PRECEDENT AND PREJUDICE BRANIFF'S
EFFORTS TO AVOID PAYMENT OF SURCHARGE. PELIKAN RECOGNIZES
THIS POINT AND HAS AGREED TO POSTPONE SIGNATURE OF CONTRACT
UNTIL JULY 5 IN ORDER PERMIT DEPARTMENT AND PANAM HEAD-
QUARTERS TO CONSIDER MATTER FURTHER.

3. PELIKAN PROVIDED FOLLOWING EXPLANATION OF BASIS FOR
SURCHARGE. IF PANAM OR ITS AGENT SELLS TICKET HERE FOR
LIMA/NEW YORK ON BRANIFF AND THEN AROUND WORLD FROM NEW YORK VIA PANAM

DGTA INSISTS THAT SURCHARGE WOULD BE PAYABLE ON PORTION
NEW YORK/BANGKOK (WHICH IS HALF WAY POINT). SIMILARLY,
IF PANAM SELLS TICKET HERE FOR LOS ANGELES/PANAMA ON PANAM,
PANAMA/LIMA/BUENOS AIRES ON BRANIFF, AND THEN BUENOS AIRES/
CARACAS ON PANAM, SURCHARGE WOULD BE PAYABLE ON LAST LEG.
CARACAS/U.S. WOULD CARRY NO SURCHARGE AS THIS IS REGARDED
BY DGTA AS FOURTH FREEDOM TRAFFIC. AFTER SOME NEGOTIATION,
AND OFFSETTING EXPENSES AGAINST EARNINGS, PELIKAN SUCCEEDED
IN PERSUADING DGTA TO ACCEPT FLAT MONTHLY PAYMENT OF \$238,
RETROACTIVE TO DECEMBER 1972. MONEY OBVIOUSLY UNIMPORTANT,
AND HE INCLINED BELIEVE DGTA MERELY WANTS PANAM TO SIGN UP
AS MATTER OF PRINCIPLE. IF PANAM DOES SO, HE THINKS JAL
AND SWISSAIR WILL BE NEXT.

4. ACTION REQUESTED: EMBASSY WOULD APPRECIATE DEPARTMENT'S
DISCUSSING FOREGOING ON URGENT BASIS WITH EITHER OF FOLLOWING
IN PANAM'S NEW YORK OFFICE: PAUL RENNELL, VICE PRESI-
DENT, LATIN AMERICA; OR M. GALEZO, DIRECTOR OF FOREIGN
TAXES. THEY SHOULD BE INFORMED THAT PELIKAN IS DELAYING
SIGNATURE OF CONTRACT UNTIL JULY 5 WITH PROSPECT THAT
PANAM MIGHT REFUSE SIGN IF SUCH ACTION AGREED UPON AFTER
CONFERRING WITH DEPARTMENT. PELIKAN WOULD APPRECIATE RE-
CEIVING APPROVAL THIS DELAY FOR FURTHER CONSIDERATION ASAP
VIA DEPARTMENT AND EMBASSY.

5. COMMENT: QUESTION TO BE DETERMINED IN EMBASSY VIEW
IS (1) WHETHER IN DEPARTMENT'S OPINION SURCHARGE TO BE PAID
BY PANAM CONSTITUTES PREJUDICIAL PRECEDENT FOR BRANIFF AND
(2) IF SO, WHETHER PANAM CAN BE PERSUADED NOT TO SIGN CON-
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TRACT. PELIKAN POINTS OUT THAT PANAM IS ANXIOUS TO PULL
OUT OF LIMA AND HE IS UNDER SOME PRESSURE TO SIGN.

6. ATTEMPT TO ASSESS SURCHARGE AGAINST PANAM IS OBVIOUSLY
UNDESIRABLE AND CONSTITUTES STRETCHING TO RIDICULOUS EX-
TREME OF GOP CONCEPT OF "REAL RECIPROCITY". ON OTHER HAND,
WE BELIEVE CASE MIGHT BE MADE FOR REGARDING ASSESSMENT AS
FORM OF TAX ON PROFITS OF REMITTANCES. WE UNDERSTAND

PORTIONS OF SOL TICKETS ARE FREQUENTLY CASHED
IN FOR DOLLARS ELSEWHERE.
SUCH INTERPRETATION MIGHT PARTICULARLY
BE POSSIBLE IF CONTRACT SPECIFIES
(AS WE UNDERSTAND TO BE THE CASE) THAT PANAM IS ABIDING
BY PERUVIAN LAW IN GENERAL, WITHOUT SPECIFIC REFERENCE TO
TWO DECREE LAWS PURSUANT TO WHICH SURCHARGE IS BEING
IMPOSED. IF USG CAN TAKE POSITION THAT LEVY IS A FORM
OF TAXATION AND HENCE PAYABLE BY PANAM WITHOUT PREJUDICE
TO USG POSITION OF FIFTH FREEDOM SURCHARGE, IT MIGHT
THUS BE POSSIBLE AVOID INJECTING YET ANOTHER COMLIC-
TION INTO THE HIGHLY COMPLEX BRANIFF/AEROPERU PROBLEM.
WE SHOULD ALSO BEAR IN MAIND THAT BRANIFF IS PAYING SUR-
CHARGE ON SOME FLIGHTS AND IT MAY BE DIFFICULT PERSUADE
PANAM IT SHOULD BE MORE METICULOUS.
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